



THE GAUHATI HIGH COURT AT GUWAHATI

(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

Criminal Petition No. 687 of 2022

ARSHID ANOWAR HUSSAIN
S/O AZIZUR RAHMAN
R/O VILL- BALAPARA
P.O. BALAPARA
P.S. JOGHIGHOPA
DIST. BONGAIGAON, ASSAM
PIN-783382.

.....Petitioner.

VERSUS

1. THE STATE OF ASSAM,
REP. BY THE PP, ASSAM.
2. UMME SALMA
W/O ARSHID ANOWAR HUSSAIN
D/O ATAUR RAHMAN
VILL- BARBALA
P.O. BARBALA, P.S. HOWLY
DIST. BARPETA
ASSAM, PIN-78131

.....Respondents.

**BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN**

For the Petitioner : Mr. A. Ahmed.
.....Advocate.

For the Respondents : Mr. B. Sarma, Addl. P.P.
Ms. Meghali Barman,
Legal Aid Counsel.
.....Advocates.

Date of Hearing : 16.11.2023

Date of Judgment : ***4th December, 2023***

JUDGMENT AND ORDER

Heard Mr. A. Ahmed, learned counsel for the petitioner and Ms. M. Barman, learned Legal Aid Counsel for the respondent No. 2.

2. In this petition, under Section 482 read with Section 397 of the Cr.P.C., the petitioner namely, Arshid Anowar Hussain, has put to challenge the ex-parte final order dated 18.07.2018, passed in C.R. Case No. 1059/2016, passed by the learned Judicial Magistrate First Class, Barpeta.

3. It is to be noted here that vide ex-parte final order dated 18.07.2018, the learned court below has directed the petitioner to pay maintenance to the respondent No. 2, @ Rs. 6,000/- per month.

4. The background facts leading to filing of this revision petition is briefly stated as under:-

"The petitioner and the respondent No.2 are husband and wife and they got married on 20.04.2015, as per Muslim Shariat and thereafter, they stated their conjugal life in the house of the petitioner. Thereafter, marital discord surfaced between the petitioner and the respondent, and the petitioner used to subject the respondent to both physical and mental cruelty demanding dowry. Then, being unable to bear the torture, meted out to her, she left the matrimonial home and taken shelter in her parental house. Thereafter, the respondent had instituted a proceeding under Sections 18, 19, 20 and 22 of Protection of Women from Domestic Violence Act, 2005 before the learned JMFC, Barpeta, which was registered as C.R. Case No.1059/2016. In the said proceeding the petitioner entered appearance and submitted written statement denying the averments made in the petition. But, subsequently he became irregular in appearing before the learned court below and also failed to deposit interim maintenance, as directed by the learned court below. And therefore, the learned court below had proceeded ex-parte against the petitioner. Thereafter, taking the evidence of the respondent No. 2 and her witnesses and hearing her counsel, the learned court below arrived at the finding that prima-facie domestic violence was perpetrated upon the respondent No. 2 and therefore, the learned court below has passed the order under Section 18 of the Act, prohibiting the petitioner from committing further act of domestic violence and further directed the petitioner to secure

alternate accommodation or to pay a sum of Rs.3,000/- to the respondent No. 2, as per provision of Section 19 of the Act and further directed to pay a sum of Rs.6,000/- being the maintenance to the respondent No. 2, as per provision of Section 20 of the Act and further directed to pay a sum of Rs.75,000/- being the compensation and damages to the respondent No. 2, as per provision of Section 22 of the Act.”

5. Being aggrieved, the petitioner has filed the present petition for setting aside the impugned ex-parte judgment and order in C.R. Case No.1059/2016, passed by the learned Judicial Magistrate First Class, Barpeta on the following grounds:-

- [i] the petitioner has been working as a correspondent of Batori Kakot at A.B. Publication, Pensionpara Road, Silpukhuri, Guwahati and his monthly income is of Rs.7,000/- per month and as such, the quantum of maintenance provided by the learned court below, the petitioner could not bear the same;
- [ii] there is a chance of amicable settlement between the parties, but the learned court below has ignored the provision of Section 14 of the Domestic Violence Act and which is mandatory in nature and therefore, the impugned order is vitiated and bad in law; and
- [iii] the learned court below has passed the impugned ex-parte final order, without affording any opportunity of being heard to the petitioner, and thereby, violated the principle of natural justice.”

6. Mr. Ahmed, learned counsel for the petitioner submits that the petitioner has been working as a correspondent in a Batori Kakot at Guwahati and his monthly income, as determined by the learned Principal Judge, Family Court, Barpeta in F.C.[Crl.] Case No.104/2020, under Section 125 of the Cr.P.C., dated 18.01.2023, is Rs.12,000/- and that in the said proceeding under Section 125 of the Cr.P.C., the learned court below has directed the petitioner to pay maintenance to the son of the respondent No.2 @ Rs.2,000/- per month and that in view of the Exe Parte final order dated 18.07.2018, passed by the learned Judicial Magistrate First Class, Barpeta, in C.R. Case No.1059/2016, the petitioner has to pay a sum of Rs.6,000/- and if the total income of the petitioner is Rs.12,000/- out of which he has to pay a sum of Rs.8,000/- [6,000/- + 2,000/-] to the respondent No.2, then nothing will remain with the petitioner. Mr. Ahmed further submits that there is a chance of amicable settlement between the parties and the petitioner is also ready to pay a sum of Rs.3,000/- per month and therefore, it is contended to set aside the impugned Exe Parte final order and remand back the same to the learned trial court to hear the matter afresh and to pass a fresh judgment.

7. On the other hand, Ms. Barman, learned Legal Aid Counsel for the respondent No. 2 submits that the impugned Exe Parte final order suffers from no infirmity or illegality and that there is no violation of the principle of natural justice, as after filing of written statement before the learned court below, the petitioner failed to appear before it, for which the learned court below had heard the

matter ex-parte and directed the petitioner to pay maintenance to the respondent No.2, @ Rs.6,000/- per month. Ms. Barman further submits that there is provision of appeal before the learned Sessions Judge, under Section 29 of the Domestic Violence Act, but, without availing that alternative remedy, the petitioner has directly approached this Court under Section 482 of the Cr.P.C., which is not maintainable and therefore, it is contended to dismiss the petition.

8. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the petition as well as the documents placed on record and also perused the impugned Exe Parte final order dated 18.07.2018, passed in C.R. Case No.1059/2016, passed by the learned Judicial Magistrate First Class, Barpeta.

9. It appears that the petitioner had appeared before the learned court below and filed the written statement and thereafter, he became irregular and he also failed to make payment of the interim maintenance to the respondent No.2, as directed by the learned court below. Further, it appears that as he failed to appear before the learned court below regularly, the learned court below has proceeded to hear the matter ex-parte and thereafter, examined 4[four] witnesses and thereafter, hearing the learned counsel for the petitioner, the learned court had passed the impugned ex-parte final order and arrived at the finding that the domestic violence was perpetrated upon the respondent No.2 by the petitioner, and thereafter, provided the relief, as mentioned herein above. Therefore, the contention of the petitioner that the impugned order

was passed without hearing him and also in contravention of the principle of natural justice is devoid of substance. Though it is being contended that there is chance for amicable settlement between the parties, yet, the petitioner can initiate such dialogue with the respondent No.2, for which setting aside of the impugned order is not at all necessary and more so it is not a just ground also.

10. The petitioner is a poor lady and taking shelter in her parental abode and depending on her parents for a two square meal a day. She even failed to contest this petition, for which this Court is compelled to engage one Legal Aid Counsel to defend her case. Therefore, this Court is of the considered view that setting aside of the impugned ex-parte final order, on the ground of existence of a chance for amicable settlement, will cause gross injustice to the respondent No.2.

11. Though Mr. Ahmed, learned counsel for the petitioner submits that vide judgment and order dated 18.01.2023, the learned Principal Judge, Family Court, Barpeta in F.C.[Cr.] 104/2020, under Section 125 of the Cr.P.C., has directed the petitioner to pay maintenance to the son of the respondent No.2 @ Rs.2,000/- and as such, the financial burden upon the petitioner will amounts to Rs.8,000/- [6,000/- + 2,000/-] per month and the petitioner has been working in a Batori Kakot as a correspondent, yet, such a submission is found to be devoid of merit.

12. Further it appears that Section 30 of the Domestic Violence Act, provides for preferring an appeal before the learned Sessions

Judge. But, without availing such option, the petitioner has directly approached this Court under Section 482 of the Cr.P.C., which is not maintainable. It is well settled that the inherent powers under Section 482 Cr.P.C. can be exercised only when no other remedy is available to the litigant in the Code or the concerned Act, not where a specific remedy is provided in the Code or in the concerned Act. If an effective statutory alternative remedy is available, the Courts should refrain from exercising its extraordinary power under Section 482 Cr.P.C., especially when the litigant has not availed of that remedy. Reference in this context can be made to a decision of Hon'ble Supreme Court in the case of **Madhu Limaye vs. State of Maharashtra** reported in **(1977) 4 SCC 551** and **State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335**.

13. In the result, I find no merit in this petition and accordingly the same stands dismissed, leaving the parties to bear their own cost. The registry shall pay the necessary fees to the learned Legal Aid Counsel as per her entitlement.

JUDGE

Comparing Assistant